

Bar of Jurisdiction of Civil Courts To Hear Demolition Cases

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The Maharashtra State Legislature has passed the Maharashtra Municipal Corporations, Municipal Councils and Maharashtra Regional and Town Planning (Amendment) Act, 2010 (Mah. Act No. II of 2012) ("the Amendment Act"). The Amendment Act has inter alia amended the Mumbai Municipal Corporation Act, 1888 (the MMC Act") and has come into effect from 22 March 2012 ^[1] One of the most significant amongst the amendments to the MMC Act is the insertion of Section 515A which now bars the jurisdiction of civil courts to entertain any suit or any other legal proceeding against any notice issued, order passed or direction issued by the Designated Officer, under section 351 or 354A of the MMC Act. The text of the newly inserted Section 515A is reproduced hereunder:

515A. Bar of jurisdiction. - *Save as otherwise provided in this Act, any notice issued, order passed or direction issued by the Designated Officer, under section 351 or 354A shall not be questioned in any suit or other legal proceedings.*

The object of introducing Section 515A is to ensure that recourse to civil remedies is not utilized with a view to abuse the process as would generally result when those responsible for unauthorized constructions use every possible means to ensure that a delay takes place in the disposal of proceedings, once a stay is obtained. The intention is to act in public interest to ensure that the urgent need of taking expeditious action against unauthorized constructions does not get lost in a maze of dilatory remedies in civil courts.

Constitutional Validity of Section 515A of the MMC Act

The insertion of Section 515A and its aftermath have come to light after a recent ruling of the Division Bench of the Bombay High Court wherein the constitutional validity of Section 515A was upheld ^[2]. The constitutional validity of Section 515A came to be challenged inter alia on the grounds that (i) adequate safeguards are not provided under Sections 351 and Section 354A of the MMC Act and (ii) an adequate machinery has not been provided in the statute for adjudication of all issues that may arise and therefore Section 515A is arbitrary and violative of Article 14 of the Constitution.

Negating the contentions of Petitioner, the Hon'ble Bombay High Court upheld the constitutional validity of Section 515A of the MMC Act vide its judgment dated 17 July 2013 inter alia for the following reasons:

1. The intention of the legislature is to obviate the inordinately long delays that were occasioned in the taking of steps against illegal structures and constructions due to the pendency of suits before the civil courts. The legislature was entitled to take cognizance of these delays and to enact a suitable statutory provision and hence the same cannot be regarded as being arbitrary.
2. There is nothing uncommon in a competent legislature barring the jurisdiction of a civil court to entertain a civil suit of a specified nature. Adequacy or sufficiency of the remedies provided under the Act may be relevant but not decisive [3].
3. The absence of an appellate remedy against the decision of an administrative officer does not render a statutory provision unconstitutional [4].
4. Sections 351 and 354A contain adequate safeguards to ensure that the determination by the authority is subject to the observance of statutory parameters.

Before the insertion of the said Section 515A, the normal course of action undertaken by any person in receipt of such a notice or against such a direction or order of the Designated Officer under Section 351 or Section 354A of the MMC Act would be to file a civil suit in appropriate civil court and secure an order from the court staying the implementation and execution of the notice or direction issued or the order passed by the Designated Officer. The builder/developer/owner would thus be protected against the demolition of their constructions. The Supreme Court had repeatedly cautioned the State against the dangers of unauthorized construction and encroachments [5]. With the introduction of section 515A in the MMC Act, access to the civil courts is now barred and the only remedy which now remains against such a notice, direction and/or order passed by the Designated Officer under Sections 351 or 354A of the MMC Act is recourse to the writ jurisdiction of the High Court.

Nevertheless, the authority i.e. the Designated Officer is cast with a duty to exercise its discretion judiciously and not arbitrarily. The Designated Officer is required to observe the principles of natural justice and pass a speaking order accompanied by reasons, which necessitates application of mind to germane or relevant material. Such decision is liable for scrutiny and challenge under Article 226 of Constitution of India.

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1. Urban Development Department Notification No. MMC.2009/72/C.R.48/2009/UD-32 dated 22 March 2012.
 2. Writ Petition (L.) No. 1709 of 2013 Abdul Razzaq Sunesra v. Municipal Corporation of Greater Mumbai & ors. (Bombay High Court)
 3. Reliance was placed on Dhulabhai v. State of Madhya Pradesh & Anr., AIR 1979 SC 78.
 4. Reliance was placed on Organo Chemical Industries & Anr. V. Union of India & ors., (1979) 4 SCC 573; M/s Babubhai & Co. & ors v. State of Gujarat & ors, (1985) 2SCC 732.
 5. Pratibha CHS Ltd. & Anr. V. State of Maharashtra & ors., (1991) 3 SCC 341; Esha Ekta Apartments CHS v. Municipal Corporation of Mumbai, (2013) 5 SCC 357.

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